

December 7, 2004

AGREEMENT TO MAINTAIN CONFIDENTIALITY

WHEREAS, this agreement is entered into by the Health Research Science Board ("Board") and \_\_\_\_\_ ("the Researcher") [or "the Designated Person," who has been designated by \_\_\_\_\_ ("the Researcher")];

WHEREAS, pursuant to Public Health Law ("PHL") § 2411(1)(d), the Board has established guidelines to restrict the dissemination by researchers of the name, address or other information that would identify a commercial or private applicator of pesticides or any person who receives the services of a commercial applicator;

WHEREAS, information that would identify a commercial or private applicator or any person who received the services of a commercial applicator is, pursuant to Environmental Conservation Law ("ECL") § 33-1201(2), confidential;

WHEREAS, in accordance with PHL § 2411(1)(d), the Researcher [Designated Person] has requested access to information, pursuant to ECL § 33-1203(1)(b) and/or ECL § 33-1205(2)(c), which includes, or may include, the name, address or other information that would identify a commercial or private applicator of pesticides or any person who receives the services of a commercial applicator;

NOW THEREFORE, the Board and the Researcher [Designated Person] hereby agree as follows:

1. Definitions

- (a) "Board" means the Health Research Science Board.
- (b) "Confidentiality agreement" means an agreement between a researcher, or a designated person, and the Board to maintain the confidentiality of confidential information.
- (c) "Confidential information" means information which contains the name, address or other information that would identify a commercial or private applicator of pesticides or any person who receives the services of a commercial applicator.
- (d) "Pesticide application information" means pesticide application information, including confidential information, maintained by a private applicator of pesticides pursuant to Environmental

Conservation Law ("ECL") § 33-1205(2)(b).

- (e) "Pesticide Registry information" means pesticide application and sales information, including confidential information, maintained by the New York State Department of Environmental Conservation pursuant to ECL Title 12.
- (f) "Researcher" means a person who informs the Board that he or she is engaged in human health related research and requests access to Pesticide Registry information or pesticide application information.
- (g) "Designated person" means an individual designated by a researcher in the researcher's Request for Pesticide Registry Information or Pesticide Application Information Form whose access to confidential information is required by the researcher to carry out the research study for which such information is sought.
- (h) "Institution," for the purpose of access to Pesticide Registry Information or Pesticide Application Information, means any public or private entity or agency (including federal, state, and other agencies).

2. Researcher Access to Pesticide Registry Information and/or Pesticide Application Information

(a) For Requests for Pesticide Registry Information

If, pursuant to PHL § 2411(1)(d), the Researcher has requested access to Pesticide Registry information, the Board shall, to the extent it is available from the New York State Department of Environmental Conservation, provide to the Researcher information requested by the Researcher, as described in (1) the Researcher's Request for Pesticide Registry Information or Pesticide Application Information Form, dated \_\_\_\_\_, a copy of which is annexed hereto as Attachment A; or (2) if the Board has determined that the Researcher's request should be approved in part, the Board's determination, dated \_\_\_\_\_, a copy of which is annexed hereto as Attachment B.

(b) For Requests for Pesticide Application Information

If, pursuant to PHL § 2411(1)(d), the Researcher has requested access to pesticide application information from a private applicator of pesticides, the Board hereby authorizes access to such information, as described in (1) the Researcher's Request for Pesticide Registry Information or Pesticide Application Information Form, dated \_\_\_\_\_, a copy of which is annexed hereto as Attachment A; or (2) if the Board has determined that the Researcher's request should be approved in part, the Board's determination, dated \_\_\_\_\_, a copy of which is annexed hereto as Attachment B.

3. The Researcher [Designated Person] shall maintain the confidentiality of any Pesticide Registry information provided to the Researcher by the Board, or pesticide application information obtained by the Researcher from a private applicator of pesticides, which contains confidential information.

4. The Researcher [Designated Person] shall use confidential information solely for the purpose described by the Researcher in the Researcher's Request for Pesticide Registry Information or Pesticide Application Information Form annexed hereto. Changes to the use of confidential information as described in the Researcher's Request for Pesticide Registry Information or Pesticide Application Information Form shall be submitted in a letter to the Board for consideration.

5. The Researcher [Designated Person] shall not publish, or disclose to any person or entity, other than designated persons who have executed notarized confidentiality agreements that also have been executed by the Board, any confidential information. If there are any circumstances whereby publication of data or information by zip code, county and/or other geographic unit would directly identify an individual, or a particular parcel of real property, the Researcher [Designated Person] shall not knowingly publish or knowingly disclose to any person or entity other than a designated person who has executed a notarized confidentiality agreement that also has been executed by the Board Pesticide Registry or pesticide application information in a manner which would directly identify such an individual or parcel of real property.

6. The Researcher [Designated Person] shall never leave confidential information unattended, unless such information is in locked storage, to which only the researcher and designated persons have keys, or in secure electronic files. In addition, for electronic files, the researcher shall keep all confidential information on a computer that operates under a secure operating system and shall implement procedures regarding security settings and password protection for data access. Provisions shall be made, using current computer security knowledge and technology, to secure and limit access to confidential information stored on network computers or computers with an internet connection. Network administrators must be informed of the confidential nature and location of data stored on network resources, and aware that they shall only grant access to these networks under authority of the researcher. At all times, confidential information and the equipment upon which it resides shall be subject to electronic and physical security, and shall be maintained, so as to ensure that it is accessible only to the researcher and designated persons who have executed confidentiality agreements as required by these Guidelines.

7. Upon determining, based on information from any source other than the Board, that confidential information provided to the Researcher has been disclosed, may have been disclosed and/or is at risk of disclosure to any person or entity other than designated persons who have executed notarized confidentiality agreements that also have been executed by the Board, the Researcher shall, within two business days, send to the Board, by overnight mail, a description of any information the Researcher has regarding such

disclosure, possible disclosure and/or risk of disclosure of confidential information.

8. Following receipt of an allegation that confidential information provided to the Researcher has been disclosed, or is at risk of disclosure, to any person or entity other than designated persons who have executed notarized confidentiality agreements that also have been executed by the Board, and a written determination by the Board (to be made expeditiously following receipt of such an allegation) sustaining such an allegation which sets forth the reasons for that determination, the Board shall promptly direct the Researcher to return such confidential information, and any copies of that information in the custody of the Researcher, to the Board. The Researcher agrees to return such confidential information, and any copies of such information in the custody of the Researcher, to the Board within two business days of receipt of such a directive from the Board. The Researcher may request that the Board reconsider its determination, upon a claim that the Board has overlooked or misunderstood the Researcher's position regarding the disclosure, or risk of disclosure, of confidential information to a person or entity other than a designated person who has executed a notarized confidentiality agreement that also has been executed by the Board.

9. The Researcher shall destroy all confidential information within two years of \_\_\_(date)\_\_\_, which is the anticipated conclusion of the research for which the confidential information was obtained, unless the Researcher demonstrates to the Board, and the Board finds, that there is a compelling reason for maintaining such information for a specified period of time. If confidential information has been stored on network resources, the researcher should work with the network administrator to assure that all backup copies or archives of confidential information are also destroyed.

10. If the Researcher concludes that it is necessary to the conduct of his or her research to provide confidential information to a person not identified as a designated person in the Researcher's Request for Pesticide Registry Information or Pesticide Application Information Form, confidential information may be provided to that person only after (1) the Researcher submits to the Board a supplemental Request for Pesticide Registry Information or Pesticide Application Information Form identifying that person as a designated person; and (2) the Board and that person execute a confidentiality agreement.

11. If Pesticide Registry information obtained from the Board is used by the Researcher in any publication or report, the Researcher shall acknowledge the New York State Department of Health, Health Research Science Board and the New York State Department of Environmental Conservation as the sources of the information. If pesticide application information obtained from a private applicator of pesticides is to be used by the Researcher in any publication or report, the Researcher must first inform the applicator regarding the intended use of this information, offer to acknowledge the applicator as the source of the information, and shall, if requested by the applicator, acknowledge the applicator as the source of the information.

12. The Researcher [Designated Person] shall defend, indemnify and hold harmless the Board, the New York State Department of Health, and the New York State

Department of Environmental Conservation and their officers and employees from any and all claims resulting from the intentional or negligent acts or omissions of the Researcher [Designated Person] and the Researcher's staff, including but not limited to, designated persons, with regard to information provided to the Researcher [Designated Person] under this agreement. Such acts shall include, but not be limited to, breach of confidentiality and violation of any right of privacy, copyright or other proprietary right.

13. This agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. In addition to the methods of service allowed by the New York State Civil Practice Law and Rules ("CPLR"), the Researcher [Designated Person] hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Researcher's [Designated Person's] actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Researcher [Designated Person] must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Researcher [Designated Person] will have thirty (30) calendar days after service hereunder is complete in which to respond.

15. By executing this agreement, the Researcher [Designated Person] acknowledges that he or she understands (1) the restrictions set forth above regarding the publication and disclosure of confidential information, (2) that he or she may be subject to legal action, including, but not limited to, legal action by persons with an interest in maintaining the confidentiality of confidential information, and, under certain circumstances, criminal prosecution in the event that confidential information provided to the Researcher is published or disclosed to any person or entity, other than designated persons who have executed notarized confidentiality agreements that also have been executed by the Board and (3) in such event, that the Board may recommend to the New York State Department of Health and/or other state agencies that such agencies restrict the Researcher's [Designated Person's] access to information maintained in confidence by such agencies, consistent with applicable law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Health Research Science Board

\_\_\_\_\_  
Date

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public